

**.BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

PROFESSIONAL FIRE FIGHTERS')	
ASSOCIATION OF CLAYTON and)	
INTERNATIONAL ASSOCIATION OF FIRE)	
FIGHTERS, LOCAL 2665,)	
)	
Petitioners,)	
)	
v.)	Public Case No. AC 91-019
)	(Cross Reference R 90-034)
CITY OF CLAYTON,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing of a petition by Professional Fire Fighters' Association of Clayton seeking to amend its certification as bargaining representative of certain employees of the City of Clayton to reflect its affiliation with International Association of Fire Fighters, Local 2665. A hearing on said petition was held on July 9, 1991, in Clayton, Missouri at which representatives of the Professional Fire Fighters Association of Clayton and IAFF, Local 2665 were present. No City representatives were present at the hearing. The case was heard by State Board of Mediation Chairman Mary L. Gant and employer member Pamela S. Wright. The record was later submitted to employee member Joel Rosenblit. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact, conclusions of law and order granting amendment of certification.

FINDINGS OF FACT

This Board certified the Professional Fire Fighters' Association of Clayton, hereinafter Association, as the bargaining representative for all fire fighters, paramedics, and captains of the Clayton Fire Department on January 11, 1991 (Case No. R 90-034).

Shortly afterwards, the Association's leadership decided to investigate the possibility of merging or affiliating the Association with IAFF, Local 2665. Local 2665 is a labor organization chartered by the International Association of Fire Fighters to represent fire service personnel in St. Louis County, Missouri. As of the time of the instant hearing, Local 2665 represented employees in 31 separate and autonomous bargaining units of fire departments and/or fire protection districts in St. Louis County. Local 2665 provides technical services such as bargaining assistance to its affiliates. The affiliates however make their own contract proposals, negotiate their own contracts and ratify same. Contracts are not ratified by Local 2665 as a whole. Each affiliate of Local 2665 elects their own steward. The steward administers the labor agreement on a day to day basis on behalf of the local and collects dues for the local if there is no contractual dues checkoff provision. Each steward also attends Local 2665 Executive Board meetings held every three months and reports on the activities of their shop (i.e. department).

The record reflects that the question of merging the Association with Local 2665 was discussed/debated by the membership at their March, 1991 meeting. The outcome of this discussion was a vote, by a show of hands, to pursue the affiliation matter further with Local 2665.

Following that action, representatives of both labor organizations met to discuss the Association merging and/or affiliating with IAFF, Local 2665. The outcome of these discussion was that a decision was made to take a membership vote on whether the

Association should merge with Local 2665. Afterwards, this decision was announced to the membership orally and in writing. A written notice that a merger vote would be take at the June, 1991 meeting was posted on the Association's bulletin board in the fire fighter's recreation room. This notice was posted three weeks prior to the June meeting. A sample ballot was also posted on the bulletin board. It provided that employees could vote:

- ☐ to affiliate with IAFF, Local 2665.
- ☐ to remain with the Professional Fire Fighters' Association of Clayton
- ☐ to do away with either of the above.

The actual vote occurred on June 17 and 18 over several work shifts to ensure that all eligible employees could vote. Voting began on Monday, June 17 at 5:00 p.m. and concluded on Tuesday, June 18 at 9:00 p.m. As employees presented themselves to vote, they signed in so that a record was kept of how many people voted. The employees were given a printed and numbered ballot. After marking their ballot it was placed in a sealed shoe box which served as a ballot box. After the voting concluded the ballots were counted at the Association's membership meeting. One non-member of the Association and one non-officer of the Association opened the sealed shoe box, counted the ballots in front of the assembled group and reported the results. The results of the vote were 19 for affiliation with Local 2665, 3 for remaining with the Professional Fire Fighter's Association of Clayton, and 3 ballots were not cast.

Following this vote, the Association formally affiliated with Local 2665. The Association retained its previously existing financial assets.

CONCLUSIONS OF LAW

Professional Fire Fighter's Association of Clayton has petitioned this Board to amend the certification issued to it in Case No. R 90-034 to reflect its affiliation with IAFF, Local 2665.

In our decision in Kansas City Association of Educational Office Personnel (KCAEOP) v. Kansas City School District, Case No. 91-012 (SBM, 1991), this Board identified the legal standard that would henceforth be utilized to grant or deny an amendment of certification. Our task here is to apply that previously identified legal standard to the instant facts.

The applicable legal standard is that when an affiliation of one union with another prompts the union to seek an amendment of Board certification, we will review the affiliation to determine (1) whether there was substantial continuity between the pre-affiliation and post-affiliation union; and (2) whether union members had an adequate opportunity to vote on affiliation. See NLRB v. Financial Institution Employees of America, Local 1182, 475 U.S. 1982 (1986) and Western Commercial Transport, Inc., 288 NLRB No. 27, 127 LRRM 1313 (1988). In deciding whether there was substantial continuity between the pre-affiliation and post-affiliation union (criteria (1) above), the focus of inquiry will be whether the affiliation substantially changed the union. This involves such factors as whether the pre-affiliation union retained local autonomy, local officers, and continued to follow established procedures. In deciding whether the affiliation election (criteria (2) above) was conducted with adequate "due process" safeguards, we will review whether there was:

- (a) adequate notice of the affiliation vote to all members;
- (b) an adequate opportunity for members to discuss affiliation; and
- (c) reasonable precautions were taken to maintain ballot secrecy.

See NLRB v. Financial Institution Employees of America, Local 1182, *supra* and NLRB v. Newspapers, Inc., 515 F.2d 334 (5th Cir., 1975).

The record evidence persuades this Board that there was substantial continuity between the pre-affiliation union (i.e. Professional Fire Fighter's Association of Clayton) and the post-affiliation union (i.e. the Professional Fire Fighter's Association of Clayton, affiliated with IAFF, Local 2665). To begin with, it is noted that no party to this action, including the City, is on record as opposing the change in status sought herein or as challenging the continuity of the latter labor organization. Next it appears to us that established procedures still continue to be followed. For example, contract proposals are still generated by Clayton bargaining unit members, Clayton bargaining unit members still negotiate an agreement with the City (albeit with assistance from Local 2665) and the negotiated agreements are still ratified by the Clayton bargaining unit members as they were before the affiliation. Finally, there is nothing in the record to establish that the Association has been taken over by Local 2665. For example, the Association has retained its previously existing financial assets. Given the foregoing, we find that the Association's affiliation with Local 2665 did not significantly change the Association's identity.

Turning to the issue of whether due process requirements were met here, we initially note that compliance must be examined in light of the totality of the circumstances rather than in isolation. Thus, all the facts and circumstances will be considered in determining whether the affiliation vote was conducted with requisite due process safeguards.

With respect to the adequacy of the notice of the affiliation vote, we note that the written notice posted on the Association's bulletin board gave members three weeks advance notice of the June, 1991 meeting and vote. In our view, this notice was

adequate. This notice specifically advised members that the question of affiliation would be voted upon by the members at that time. Next, we also conclude that there was sufficient opportunity for discussion of the affiliation prior to the vote. Our basis for this finding is quite simple; no one testified to the contrary. Although the record does not contain the actual extent and substance of the discussion that was held, this does not affect the outcome here. We therefore hold that this requirement has also been satisfied. The final due process consideration is whether there were reasonable precautions taken to maintain ballot secrecy. It is noted in this regard that printed and numbered ballots were given to those members of the bargaining unit desiring to vote. After they marked the ballots they were placed in a sealed ballot box. No evidence was presented that the secrecy of any member's vote was violated, that other than bargaining unit members voted, that the votes were not properly collected or counted, or that the vote was tainted by any other impropriety. As a result, we are satisfied that the procedure utilized during the June 17 and 18, 1991 affiliation vote reasonably ensured ballot secrecy.

Inasmuch as the requisite due process safeguards in the affiliation vote were met and as we have earlier herein concluded that the Association's affiliation with IAFF, Local 2665 did not significantly change the identity of the Association, the amended certification is therefore granted.

ORDER GRANTING AMENDMENT OF CERTIFICATION

Based on the foregoing, it is held that the Association's affiliation with IAFF, Local 2665 satisfied the requirements outlined above. Accordingly, the certification granted to the Association in Case No. R 90-034 is hereby amended to reflect its affiliation with IAFF, Local 2665.

Signed this 25th day of September, 1991.

(SEAL)

/s/ Mary L. Gant
Mary L. Gant
Chairman

/s/ Pamela S. Wright
Pamela S. Wright
Employer Member

/s/ Joel Rosenblit
Joel Rosenblit
Employee Member